

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number	: 10/669,787	Confirmation Number	: 6413
Applicant	: John E. Jones et al.		
Filed	: September 24, 2003		
TC/A.U.	: 3693		
Examiner	: James A. Vezeris		
Title	: Financial Document Processing System		
Docket Number	: 247171-381USPT		
Customer Number	: 41,230		

APPLICATION FOR PATENT TERM ADJUSTMENT

Mail Stop Patent EXT
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 C.F.R. § 1.705(b), Applicant requests reconsideration of the patent term adjustment indicated in the September 2, 2010 Notice of Allowance. The Determination of Patent Term Adjustment included with the Notice of Allowance indicated a Patent Term Adjustment of 901 days. Applicant believes that the correct Patent Term Adjustment is 1305 days as of September 16, 2010. This Application for Patent Term Adjustment is being filed before payment of the issue fee, and is thus timely. *See* 37 C.F.R. § 1.705(b). The fee set forth in 37 C.F.R § 1.18(e) is being included.

(i) The Correct Patent Term Adjustment and Support under 37 C.F.R. § 1.702.

Applicant is entitled to a Patent term Adjustment of 1305 days as of September 16, 2010. Under 35 U.S.C. § 154(b)(1)(A), Applicant is entitled to 1023 days of adjustment. Under 35 U.S.C. § 154(b)(1)(B), Applicant is entitled to an additional 758 days of adjustment. Under 35 U.S.C. § 154(b)(2)(A), this adjustment should be reduced by 354 days. Under 35 U.S.C. § 154(b)(2)(C), this adjustment should be reduced by 122 days. These calculations are provided below. Accordingly, the total adjustment should be 1305 days as of September 16, 2010.

The United States Court of Appeals for the Federal Circuit has recently made clear that patentees are entitled to patent term adjustments under both 35 U.S.C. § 154(b)(1)(A) and 154(b)(1)(B), as long as no day is counted twice. *See Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010). The *Wyeth* court explained that the only way that the periods of time specified by Sections 154(b)(1)(A) and (B) can overlap is if they occur on the same day. The court further explained that the “B delay,” 35 U.S.C. § 154(b)(1)(B), begins when the PTO has failed to issue a patent within three years, not before. Thus, in Applicant’s case, the “B delay” began on September 24, 2006, not before. The “A delay,” 35 U.S.C. § 154(b)(1)(A), that Applicant is entitled to accrued in the period between November 24, 2004, and September 13, 2007. Thus, only 354 days of the “A delay” days overlap with the “B delay” days. Accordingly, under *Wyeth*, Applicant is entitled to the sum of the “A delay” and “B delay,” reduced by any amount specified in 35 U.S.C. 154(b)(2). As calculated below, this adjusted total is 1305 days, as of September 16, 2010.

(ii) The relevant dates specified in 37 C.F.R. §§ 1.703(a)-(e) and (f)

Under 35 U.S.C. § 154(b)(1)(A) and 37 C.F.R. § 1.703(a), Applicant is entitled to an adjustment of 1023 days.

Under 37 C.F.R. § 1.703(a)(1), Applicant is entitled to an extension of the number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed and ending on the date of mailing of an action under 35 U.S.C. § 132. The application was filed on September 24, 2003. Fourteen months from that date was November 24, 2003. A restriction requirement was mailed on September 13, 2007. The number of days under § 1.703(a)(1) is 1023 days.

37 C.F.R. §1.703(a)(2)-(6) do not apply as of the filing of this Application for Patent Term Adjustment.

Under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.703(b), Applicant is entitled to an adjustment of 758 days.

Under 37 C.F.R. § 1.703(b), Applicant is entitled to an extension of the number of days in the period beginning on the day after the date that is three years after the date on which the application was filed and ending on the date an RCE is filed or when the Application issues as a Patent, whichever occurs first. The three year date was September 24, 2006. An RCE was filed on October 21, 2008. Accordingly, the adjustment due is 758 days.

37 C.F.R. §§ 1.703(c)-(e) do not apply.

Under 37 C.F.R. §§ 1.703(f), Applicant's delay is reduced by an overlap adjustment of 354 days. Applicant is entitled to any non-overlapping delay. The "A-Delay" and the "B-Delay" overlap between September 24, 2006 and September 13, 2007. Thus, an overlap of 354 days is present.

(iii) The patent is not subject to a terminal disclaimer.

(iv) Reduction in Patent Term Adjustment due to 37 C.F.R. § 1.704

Under 35 U.S.C. § 154(b)(2)(C) and 37 C.F.R. § 1.704(b), the patent term adjustment is reduced by the number of days in excess of three months in responding to an office action. Applicant Responded to the October 24, 2007 Office Action on March 24, 2008. The time in excess of three months for this response was 60 days. Applicants Responded to the January 13, 2010 Office Action on June 14, 2010. The time in excess of three months for this response was 62 days. The total Applicant Delay is 122 days. There are no other reductions in adjustment that apply.

Conclusion

Applicant respectfully request reconsideration of the Patent Term Adjustment and a determination that Applicant is entitled to 1305 days of Patent Term Adjustment as of September 16, 2010.

Respectfully submitted,

September 16, 2010
Date

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